St. Mary's Hospital *and* New England Health Care Employees Union, District 1199, AFL–CIO. Case 34–CA–6217

March 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On March 23, 1994, Administrative Law Judge Joel P. Bibliowitz issued the attached decision. The Respondent filed exceptions and a brief in support of exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record in light of the exceptions and brief and has decided to adopt the judge's rulings, findings, and conclusions, only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(1) of the Act by ''[e]ngaging in the appearance of surveillance of its employees' union activities.'' The Respondent excepts. We find merit in the exceptions.

On June 7, 1992, the Union leafleted at three locations of the Employer's facility: the employee parking garage, the main entrance to the hospital, and a visitors' parking garage. Only the Respondent's conduct at the visitors' garage was found to have violated the Act.

From about 2:30 p.m. until 4 p.m., nonemployee union agents Wendy Mataya and Danny Hosang handed leaflets to drivers entering and exiting the visitors' garage. They began this leafleting at an island between two traffic lanes. However, they were told by Respondent's security guard, Anthony Silva, to leave the Respondent's property. They then leafleted from a public sidewalk adjacent to the island. During some of this period, including the time the agents leafleted on the public sidewalk, Silva stood nearby and observed the activity. As drivers would accept the leaflets, Silva would write something on a note pad.

The judge found that while an employer may lawfully observe the activities of a union on its premises, it may not do anything further that may restrict employees in the exercise of their Section 7 rights. The judge further found that Silva took notes when drivers accepted leaflets, even at times when the agents were not trespassing on the Respondent's property. The judge concluded that the Respondent thereby engaged in the appearance of surveillance of its employees' union activities, in violation of the Act.

The flaw that we find in the judge's conclusion concerns the lack of any evidence that the Respondent's activities were directed at any of its employees or were observed by any of its employees. There is no evidence that employees use the visitors' garage. There is also no evidence that any employees witnessed or had any knowledge of the security guard's actions. The only identifiable participants in the activity are the guard and the two union agents.

The instant case is to be distinguished from one involving actual surveillance of employees. Such surveillance, by its very nature, can violate Section 8(a)(1), even if the employees are not aware of it. *NLRB v. Grower-Shipper Veg. Assn.*, 122 F.2d 368, 376 (9th Cir. 1941), enfg. on this point 15 NLRB 322 (1939); *Bethlehem Steel Corp. v. NLRB*, 120 F.2d 641, 647 (D.C. Cir. 1941), enfg. 14 NLRB 539 (1939); *NLRB v. Baldwin Locomotive Works*, 128 F.2d 39, 50 (3d Cir. 1942), enfg. on this point, 20 NLRB 1110, 1121 (1940). See also *Branch International Services*, 310 NLRB 1092, 1106 (1993). However, the instant case involves only a complaint allegation that Respondent ''created the impression among its employees that their union activities were under surveillance by Respondent.'' By its very terms, this complaint allegation, to be proven, requires evidence that the employees were aware that the Respondent had their union activities under surveillance.[1] Otherwise, there could be no ''impression among [the] employees . . . .'' As stated, the General Counsel presented no such evidence. The missing evidence is critical to a finding that the Respondent gave the impression *to its employees* that it was surveilling their protected activity. We therefore dismiss the complaint.[2]

Our dissenting colleague would find that ''the Respondent violated Section 8(a)(1) of the Act by creating the impression among its employees that their union activities were under surveillance,'' because the Respondent gave nonemployee ''union organizers the impression that their activities [were] under surveillance, [which] *could* deter the [nonemployee] union organizers from communicating with the Respondent's employees, for fear that they will get the employees in trouble with the Respondent,'' which, in turn, ''interfer[ed] with the employees' [Sec. 7] right to *receive* information from the Union . . . .'' (First emphasis added; second emphasis in original.)[3] This theory

[1] Cf. *Waste Stream Management*, 315 NLRB 1099, 1124 (1994) ''In determining whether a respondent has created an impression of surveillance the Board applies the following test: whether employees would reasonably assume from the statement in question that their activities have been placed under surveillance.'' (Citations omitted.)

[2] Cf. *Crown Cork & Seal Co.*, 254 NLRB 1340, 1346 fn. 6 (1981).

[3] Our colleague cites *Lechmere v. NLRB*, 502 U.S. 527, 532 (1992), in support of her position and claims that *Lechmere* stands for the proposition that ''Section 7 protects employees from employer interference with the attempts of nonemployee organizers to inform employees of the advantages of self-organization.'' However, in *Lechmere* itself, the Supreme Court found that the clear employer interference there with the attempts of nonemployee organizers to in-

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is based on unwarranted speculation and finds no support in the record. Thus, there is absolutely no evidence in this record to support the theory that the Respondent's actions with respect to the nonemployee union organizers had the tendency to cause such nonemployee union organizers ''to fear that they w[ould] get the employees into trouble with the Respondent.'' Nor is there any record evidence from which a reasonable inference to that effect could be drawn. Further, neither the General Counsel nor the administrative law judge proffered such a theory for finding a violation of ''appearance of surveillance of employee union activities.''

Our dissenting colleague attempts to gloss over this weakness by asserting that ''the Respondent's activity with respect to nonemployee union organizers was fully litigated.'' The ''fully litigated'' activity here consisted solely of the testimony of one nonemployee union organizer who testified that he saw a Respondent guard write something on a pad while or after that guard had seen another nonemployer union organizer hand union leaflets to apparent nonemployee visitors as they entered Respondent's visitors' garage.

The Board has long held that the test for determining whether conduct constitutes a Section 8(a)(1) violation ''is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.'' *American Freightway Co.*, 124 NLRB 146, 147 (1959), citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946). Our dissenting colleague only claims that the employer's conduct here ''*could* deter union organizers from communicating with Respondents employees,'' that ''the result of the Respondent's activity is the *possibility* that employees' Section 7 rights will be chilled,'' and that ''the Respondent's activity . . . has been shown to have the *potential* to interfere with employees' Section 7 rights.'' (Emphasis added.) Even accepting arguendo the conclusions drawn by our dissenting colleague that there is a potential for interference with union activity, that possibility is too speculative here to warrant a finding that the Respondent engaged in activity, which, it may *reasonably* be said, *tends* to interfere with the free exercise of employee rights under the Act.

ORDER

The complaint is dismissed.

MEMBER BROWNING, dissenting:

Contrary to my colleagues I find that the Respondent violated Section 8(a)(1) of the Act by creating the impression among its employees that their union activities were under surveillance. The judge found that the Respondent created the impression of surveillance when its security guard took notes while nonemployee union agents leafletted on the public sidewalk adjacent to the visitor's garage. My colleagues reverse the judge and dismiss the complaint because there is no evidence that any employees were aware that the Respondent had their union activities under surveillance. I disagree. I believe that the General Counsel has established a violation of Section 8(a)(1) of the Act even though there is no evidence that any employees actually saw the activity of the security guard.

In *Lechmere v. NLRB*, 502 U.S. 527, 532 (1992), the Supreme Court stated that while the NLRA does not confer Section 7 rights on nonemployee organizers, the employees' Section 7 right to self-organization ''depends in some measure on [their] ability . . . to learn the advantages of self-organization from others.'' Thus, Section 7 protects employees from employer interference with the attempts of nonemployee organizers to inform employees of the advantages of self-organization.

In my view, a violation has been established in the instant case because by giving the union organizers the impression that their activities are under surveillance, the Respondent could deter the union organizers from communicating with the Respondent's employees, for fear that they will get the employees into trouble with the Respondent. Thus, by interfering with the employees' right to *receive* information from the Union, the Respondent is interfering with the employees' Section 7 right to self-organization.

In addition to the right to self-organization, Section 7 also protects employees from interference with their right to engage in ''other concerted activities for the purpose of . . . mutual aid and protection.'' By giving the union organizers the impression that it is surveilling their communication with visitors, the Respondent is interfering with communications which could ultimately assist in the mutual aid and protection of the *employees*, and is therefore interfering with employees' Section 7 rights.

In my view, creating among the union organizers the impression that their organizing activities are under surveillance is tantamount to creating the impression of surveillance among employees. In either case, the result of the Respondent's activity is the possibility that employees' Section 7 rights will be chilled.[1] Accord-

form employees themselves—not strangers, as here—of the advantages of self-organization was *not* protected by Sec. 7. 502 U.S. at 537–542.

[1] My colleagues base their conclusion that employee awareness of the surveillance is a necessary component in part upon the precise wording of the complaint, which alleges that the Respondent ''created the impression among its employees'' that their union activities were under surveillance. Where, as here, the Respondent's activity with respect to nonemployee union organizers was fully litigated and it has been shown to have the potential to interfere with the employees' Sec. 7 rights, I cannot agree with my colleagues that the specific wording of the complaint warrants a different result.

ingly, I agree with the judge and find that the Respondent has violated Section 8(a)(1) of the Act.

Craig Cohen, Esq., for the General Counsel.
Robert B. Mitchell, Esq. and *Stephanie E. Lane, Esq. (Durant, Sabanosh, Nichols & Houston)*, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in Hartford, Connecticut, on November 10, 1993.[1] The complaint herein, which issued on August 31, and was based on an unfair labor practice charge filed on June 29 by New England Health Care Employees Union, District 1199, AFL–CIO (the Union), alleges that St. Mary's Hospital (Respondent) violated Section 8(a)(1) of the Act on about June 7, by threatening representatives of the Union with arrest if they did not stop distributing handbills to Respondent's employees, and created the impression among its employees that their union activities were under surveillance by Respondent.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Connecticut corporation with an office and place of business in Waterbury, Connecticut (the facility), is engaged in the operation of a hospital providing inpatient and outpatient medical care. During the 12-month period ending July 31, Respondent derived gross revenue in excess of $250,000 and, during the same period, purchased and received at its facility goods valued in excess of $5000 directly from points outside the State of Connecticut. Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

This case involves a number of incidents that occurred at three different locations at the facility on June 7. On that day the Union employed summer interns to distribute its literature to Respondent's employees and others at the facility. The three locations at the facility where the events took place were the main entrance to the hospital, the visitors' parking garage, and the employees' parking garage, all within a 3- or 4-minute walk from each other. The players in these events were the Union's interns, Wendy Mataya, Douglas Feeney, and Nadine Berrini (who testified for General Counsel), Danny Hosang, John Kim, and Michael Boyarsky, and Respondent's security employees, Charles Harris, Gilbert Clement, Robert Rinaldi, Anthony Silva, and John Mailloux.

Mataya and Hosang began leafleting at the main entrance at about 6:15 a.m. and remained there until about 8 a.m. After handing out leaflets for about 45 minutes, a security guard approached them and asked them ''to stay off of Hospital property''; they complied with this request and leafleted only on the public sidewalk. They had no further incidents that morning at the main entrance.

Feeney and Kim distributed leaflets at the visitors' garage that morning beginning at about 6 a.m. and remaining until about 8 a.m. This garage has one entrance lane and one exit lane with an island in between. The island is approximately 6 feet wide by 15–20 feet long and leads to an attendant's booth at the entrance to the garage. On the streetside of the entrance to the garage is a sidewalk about 3 feet deep, running the entire width of the garage. On a pillar where the garage meets the sidewalk and where the island begins is a sign stating: ''NO TRESPASSING OR LOITERING ON THIS PROPERTY. VIOLATORS WILL BE PROSECUTED.'' Feeney testified that he and Kim ''might'' have been distributing literature on the island leading into the garage for a couple of minutes. A security guard warned them to stay off Respondent's property and they then went onto the sidewalk adjoining the garage. While distributing literature there, he observed a security guard in the back of the garage during the remaining time that they were at the visitors' garage that morning. They had no further incidents that morning. Silva testified that he worked the first shift that day. He was making his rounds and when he got to the visitors' garage he saw two people distributing literature adjacent to the booth (at the end of the island) where people obtain tickets on the way in, and pay on the way out. He told them that they could not distribute literature on hospital property, and they moved to the sidewalk. He left the area and returned to the visitors' garage about 9:45 a.m. At that time he saw them on the island, about 1 to 2 feet in from the sidewalk. He again told them to move to the sidewalk, which they did. He next returned to the area at about 3:10 and remained until 3:30, the end of his shift. During this period he stood in an area to the right of the island and the booth, about 20 feet distance from Feeney and Kim. Due to some confusion in Silva's testimony, I asked him for the times of his two conversations with them at the visitors' garage; he testified that the first confrontation took place about 2:45, and the second one, at about 3:10.

The afternoon leafleting at the visitors' garage referred to by Silva involved Mataya and Hosang. Mataya testified that she and Hosang got there at about 2:30 that afternoon and stood on the island (closer to the sidewalk than to the booth) where Hosang handed leaflets the drivers entering the lot and she handed leaflets to drivers leaving the lot. About 15 minutes later, Silva approached them and said that they had to get off the hospital's property and stop disrupting the flow of traffic or they would be arrested. She and Hosang then moved to the sidewalk adjacent to the beginning of the island where they resumed leafleting. While there, she observed that Silva was standing in the area to the right of the lane where the cars enter the lot. He remained there for about 10 to 15 minutes, and made notes on a pad he had when cars entered the lot. At about 3:45 Silva left and was replaced by another guard who stood near the exit lane at the garage. She and Hosang left at about 4 p.m. Silva testified that he keeps a note pad with him while on duty and transfers all of the

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1992.

notes from this pad to his delay report, at which time he throws away his notes. His daily report for the day makes two references to the visitors' garage: it states that at 2:30 p.m. he made a round through it, and at 3:10 p.m. he patrolled the entrance and went off duty at 3:30 p.m.

After soliciting at the visitors' garage in the morning, Feeney and Kim leafleted at the main entrance to the facility in the afternoon, beginning at about 2 p.m. The main entrance to the facility has two means of ingress or egress. The principal entrance is about 8 feet wide with seven steps leading to the facility. To the right of this entrance is a ramp for the disabled about 4 foot wide which exits on the street about 20 feet from the main entrance. Feeney testified that for almost the entire time that he and Kim were in this area, three of the Respondent's security guards stood from 2 to 4 feet from them; Clement was one of these guards. On one occasion, between 3 and 3:30 p.m., he saw somebody leaving the facility by the ramp, and he walked to the point where the ramp meets the sidewalk and gave her a leaflet. Within a minute, Clement grabbed him by the shoulder and said that he would be arrested if he did not get off Respondent's property. Feeney testified that when he gave the woman the leaflet he was on the public sidewalk; the individual he gave the leaflet to was at the bottom of the ramp, but still on Respondent's property, about a foot from the sidewalk. They had previously been warned to stay on the sidewalk ''and I had been keeping that in mind. . . . I looked down to check my feet to see where they were.'' There were no further incidents that day. As to whether either he or Kim walked up the steps to the entrance or up the ramp that afternoon, he testified: ''I don't have any knowledge of doing that. I don't remember doing that, no.''

Clement testified that he first saw Feeney distributing leaflets at the entrance to the facility about 3 p.m. that day. When he and Harris arrived at the main entrance no other security officer was there. During that afternoon he saw Feeney on the steps at the main entrance on about three occasions, and saw him on the disabled ramp on about three occasions. On the occasion that Feeney was on the steps, he told Feeney to remove himself from the private property and stay onto the sidewalk. On one occasion he observed Feeney, about halfway up the ramp, talking to an employee walking down the ramp. He said to Feeney: ''I'll ask you again, would you please stay on the public sidewalk?'' He testified that he never touched him and never told him to stop distributing literature. Clement left the area at about 3:30 p.m. Harris testified that he observed Feeney walking up the steps of the entrance up to about the third step; Clement approached him and told him to remain on the sidewalk, that he could not be on Respondent's property. Soon thereafter, he observed Feeney walk up one step at the entrance and Clement again spoke to him. He also observed Feeney walk 3 or 4 feet into the disabled ramp to talk to an employee. On this occasion, Clement told him: ''I'm not going to tell you again, if you go on hospital property again you'll be arrested.'' He and Clement left the area together when Rinaldi arrived, and while there he never saw Clement touch Feeney. While he and Clement were present in the area, no other security guard was there until Rinaldi came to relieve them.

The final situation involves leafleting at the employees' garage at the facility, about an identical distance from the main entrance as the visitors' garage, but in a different direction. This garage has three lanes, one entrance and two exit lanes leading to or from the garage. These lanes begin at the street and public sidewalk (which is about 3 to 4 feet deep), go straight for 20 to 30 feet, and curve sharply left into the parking lot with one booth and three gates. There are two small islands at the entrance/exits, one in front of the booth, and one between the exit lanes. A pillar on the left hand island contains a sign stating: ''NO TRESPASSING OR LOITERING ON THIS PROPERTY. VIOLATORS WILL BE PROSECUTED.'' Berrini and Boyarsky leafleted at this garage in the morning and afternoon. While leafleting in the morning, none of Respondent's security guards were there and there were no incidents. Berrini testified that in the morning she and Boyarsky distributed leaflets to cars entering and leaving the garage while standing on the public sidewalk in about the middle of the three lanes leading into the garage. When they returned in the afternoon, they again leafleted from this location. At about 2:30 p.m., Clement approached them and told them to get off the sidewalk because it was private property. Berrini told him that the sidewalk was public property and they had a right to stay there. Clement told them that they could distribute their leaflets on the road, and Berrini said that the road was not safe, and they had a right to remain on the sidewalk. Clement repeated that he did not care, and he wanted them to leaflet on the road. Berrini then went to call the Union for advice, and was told that they should stay on the sidewalk. She returned to the garage and told Clement that she and Boyarsky were going to remain on the sidewalk, and Clement told her that if she didn't move off the sidewalk he would arrest her. Berrini left again to call the Union and was told that only a police officer could arrest them, and that if she had any further problems with Clement that she should call the police. When she returned to the garage, Boyarsky was still standing on the sidewalk, and he told her that while she was gone the police came and told him that they could stand on the sidewalk. Clement was still in the area, but now with another security guard with a dog. After Clement left, the other guard remained in the area until they left at about 4 p.m., always about 10 to 13 feet from them. Berrini testified that at no time during the day did she walk off the sidewalk onto the driveway leading into the garage, and she never saw Boyarsky in that area.

Clement testified that he got to the employees' garage at about 2:40 p.m. that day after receiving a call from Rinaldi that he needed backup because the union people were giving him a hard time. When he arrived, he saw Boyarsky arguing with Rinaldi in the driveway, about 5 feet in from the sidewalk. Berrini complained to him that they had a right to distribute leaflets on the sidewalk, but that Rinaldi wouldn't let them do so. Clement agreed with her, but said that he wanted to get Rinaldi's side of the story. After speaking to Rinaldi, he told Berrini and Boyarsky to imagine a line from where Respondent's property (and the grass) ends, and that is where the sidewalk begins and where they should remain. He asked them not to stand in the driveway area where the three lanes enter and exit the garage because it wasn't safe for them to be there. Boyarsky became ''very sarcastic,'' putting one foot in the street and in other places and asking if that was all right. Clement told them: ''All I'm asking you is to stay on the sidewalk, stay off our property and we're not going to have a problem.'' He testified that he never told Berrini

or Boyarsky that they had to stand in the street. Rinaldi testified that he arrived at the employee garage at about 2:30 p.m.; Berrini was distributing leaflets on the sidewalk, but Boyarsky was leafleting in the driveway, about 8 feet in from the sidewalk. He asked Boyarsky a few times to move off Respondent's property, and Boyarsky asked why he was being so ''hard assed'' and being an ''ass hole.'' Rinaldi called for assistance, and Clement got there about 10 minutes after he arrived. By that time, both Berrini and Boyarsky were on the public property. He never told Berrini or Boyarsky to leaflet from the street.

Mailloux testified that he was in Clement's office at 2:30 p.m., when his shift ended, and heard Rinaldi's call for assistance. He went to the employees' garage with Clement, because his car was parked there and he was leaving for the day. When they got to the garage, Rinaldi was speaking to Boyarsky, who ''was in his face, giving him trouble . . . was very loud . . . wouldn't shut his mouth.'' Boyarsky then kept asking Clement where the property line was, drawing imaginary lines. Berrini, who was on the sidewalk when he arrived, came to speak to Clement within the driveway to ask for his name. After about 5 minutes, Mailloux asked Clement if he needed him any more, and Clement said that he did not, so he left. Harris testified that he got to the employee garage at about 2:45 and left at about 3 p.m. with Clement. While he was there he did not see Berrini, but did see a male distributing leaflets from the sidewalk. Harris asked him for a leaflet, which he gave him, and told him that as long as he stayed on the sidewalk there wouldn't be any problems.

IV. ANALYSIS

It is alleged that by taking notes in his note pad in the visitors' garage on the afternoon of June 7 Respondent, by Silva, was creating the impression that Respondent was engaging in surveillance of its employees' union activities, in violation of Section 8(a)(1) of the Act. Mataya testified that while she and Hosang were distributing leaflets to cars entering and exiting the visitors' garage Silva was standing by the lane where the cars entered the garage writing notes on his note pad as cars entered the garage. Silva testified that for the last 20 minutes of his shift he stood where the cars entered the garage. He never specifically testified whether he took notes as cars entered the garage or what notes he took. He testified only that he keeps a note pad for his rounds and, at the end of the day, transfers all of those notes to his daily report. His daily report for June 7 makes no mention of the cars that entered and left the visitors' garage on that day. An employer has an absolute right to prevent a union, or anybody else, from unlawfully trespassing on his property and can station security guards, or anybody else, at these locations to prevent such a trespass. The law is equally clear that unions that choose to openly engage in their organizational activities at an employer's premises will not be heard to complain that the employer was observing these activities. *Hoschton Garment Co*., 279 NLRB 565 (1986). However, while an employer may lawfully observe the activities of a union on its premises, it may not do anything further that may restrict an employee in the exercise of his Section 7 rights.

During the afternoon, Mataya and Hosang were distributing leaflets on the public sidewalk, after being told by Silva to get off the island, which was on Respondent's property. It was while they were on the public property that it is alleged Silva took notes of the cars that accepted leaflets from them. Mataya testified that as Hosang gave leaflets to cars entering the garage, she observed Silva writing something on a note pad. Silva testified that everything in his note pad goes into his daily report, and his daily report for that day only states the time that he was at the garage. I credit the testimony of Mataya for two reasons: I found her to be a direct and credible witness and, although I found Silva to be a credible witness as well, the lack of a direct denial that he took notes on his note pad of the cars entering the garage after Hosang gave them a leaflets, convinces me that Mataya's testimony is the more credible. As he was taking notes of those accepting leaflets from Hosang, at a time when Hosang and Mataya were not trespassing on Respondent's property, Respondent had no legal right or purpose in doing that and therefore violated Section 8(a)(1) of the Act. *Baddour, Inc*., 281 NLRB 546 at 548 (1986); *Gilliam Candy Co*., 282 NLRB 624 (1987); *Guille Steel Products Co*., 303 NLRB 537 at 539 (1990).

The remaining allegations are that by ''assaulting'' Feeney at the main entrance to the facility and threatening him with arrest, and by denying Berrini the right to leaflet on public property, the sidewalk, Respondent, by Clement, violated Section 8(a)(1) of the Act. These allegations involve straight credibility questions. Feeney testified that he was never on Respondent's property while leafleting at the main entrance, and while he was on the public sidewalk giving a leaflet to an employee, Clement grabbed him by the shoulder and threatened to have him arrested unless he got off Respondent's property. Clement and Harris testified that they observed Feeney on the steps leading to the main entrance and on the disability ramp on a number of occasions that afternoon. On each of these occasions, Clement warned Feeney to remain on public property, the sidewalk, with the threat that if he did not remain on the sidewalk, he would have him arrested: ''I spoke to you before, let this be your last warning.'' They each testified that Clement never touched Feeney. This is another difficult credibility determination, but one that I find in favor of Clement and Harris. Although Feeney appeared to be a credible witness, I found the testimony of Clement and Harris to be straightforward and credible and credit their testimony over that of Feeney. I therefore find that Feeney was trespassing on Respondent's property during this incident and that Clement had the right to order him off the property under the threat of arrest.

Berrini testified that in the afternoon, while she and Boyarsky were standing on the sidewalk in the middle of the three lanes leading to the employees' garage distributing leaflets to the cars entering the garage, Clement ordered them to get off the sidewalk, which was private property, and to leaflet on the road. Clement testified that when he arrived at the employees' garage that afternoon, Boyarsky was arguing with Rinaldi inside the driveway leading to the garage. Clement told them that they could leaflet on the sidewalk where Respondent's property ended, but that they should not stand in the three lanes where the cars enter and exit the garage because it was not safe to stand there. Again, although I found Berrini to be a generally credible witness, I find Clement's testimony more believable and credit his testimony over that of Berrini. As he neither said nor did anything unlawful, and only recommended that they not leaflet

where the cars were entering and exiting the garage for safety reasons, I recommend that this remaining allegation be dismissed.

CONCLUSIONS OF LAW

1. Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By appearing to engage in the surveillance of its employees' union activity, the Respondent violated Section 8(a)(1) of the Act.

4. Respondent did not violate the Act as further alleged in the complaint.

THE REMEDY

Having found that Respondent has violated the Act, I shall recommend that it be ordered to cease and desist from creating an impression that it was engaging in surveillance of its employees union activities and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]